



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 16, 1998

Mr. J. Middlebrooks  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
2014 Main, Room 501  
Dallas, Texas 75201

OR98-0174

Dear Mr. Middlebrooks:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112775.

The City of Dallas Police Department (the "department") received a request for a special report concerning a peace officer that Sergeant Hughes submitted to the Chief of Police pursuant to General Order 432.01. You assert that the requested information is excepted from required public disclosure based on Government Code section 552.103. You submitted the information the department seeks to withhold from public disclosure.

Section 552.103(a) of the Government Code reads as follows:

(A) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.



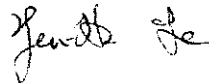
To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

You argue that the requested document is related to pending litigation, *Gates v. City of Dallas*, Cause No. 3:96-CV-2198-D, filed in federal district court in the Northern District of Texas. We conclude that you have shown that litigation is pending and that the requested information relates to pending litigation. Therefore, you may withhold the information under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/rho

Ref.: ID# 112775



Enclosure: Submitted document

cc: Mr. Bob Gorsky  
Burleson, Pate & Gibson, L.L.P.  
2414 North Akard, Suite 700  
Dallas, Texas 75201-1748  
(w/o enclosure)